



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NEWFOUND AREA TEACHERS ASSOCIATION/
NEA-NEW HAMPSHIRE

Complainant

v.

NEWFOUND SCHOOL DISTRICT

Respondent

CASE NO. T-0270:14 (A)

DECISION NO. 90-39

APPEARANCES

Representing Newfound Area Teachers Association/NEA-NH:

Jan Paddleford Loto, UniServ Director

Representing Newfound School District:

Gary W. Wulf, Consultant

Also appearing:

George A. Corrette, II, Superintendent
Robert B. Simpson, N.A.S.D.
Arthur Ellis, N.A.S.D.
William McLane, N.A.T.A.

BACKGROUND

The Newfound Teachers Association/NEA-NH (Association) filed improper practice charges against the Newfound School District (District) charging the District with dealing directly with bargaining unit members and bypassing the exclusive representative by discussing flex days, the elimination of certain flex days and conducting a ballot poll of the teachers.

The District by way of answer alleged misrepresentation of facts by the Association regarding certain written communications relative to a ballot poll of the teachers and such poll did not in any way restrict the rights of the bargaining unit members and further that while the existing contract had expired the parties recognized the continuation of status quo of the expired contract pending negotiations for a new contract.

The actions complained of are basically undisputed. A ballot survey was conducted to ask who would be interested in various flex time schedules which could add or subtract from the total number of school days during the year.

Hearing in this matter was held at the PELRB office in Concord, New Hampshire on May 3, 1990.

Witness Robert B. Simpson principal of the High School testified that the subject of flex time was an issue in negotiations and no agreement has been reached, presented minutes of teacher staff meetings when flex days were discussed and the results if certain proposals went into effect, it would be a change in conditions. Further he envisioned the survey and discussions were to get staff information who might be interested in such schedules and saw the effort as idea gathering and further the fact that flex days were individually negotiated with each teacher and the District had never before set the flex day schedule.

Witness Arthur Ellis, principal of the Middle School summarized a faculty meeting where the subject was discussed and further that the questionnaire was placed in all members mailbox with a request that they be returned by a certain time and that the survey might be considered as an enticement with respect to the utilization of flex days and further that only approximately 50% of the teachers participated in the survey.

Witness George Corrette, Superintendent of Schools indicated that flex time had been a subject of bargaining and referenced Article X of the CBA and the survey was only offering flexibility to the teacher with respect to their schedules.

Witness William McLane, President of the Association testified as to the survey proposals and its effect on individual members, had been made to the faculty and the School Board but never to the exclusive representative.

Gary Wulf for the District in closing objected to the references paragraph 273-A:1 (a), (e), (g), (h) and (i) as made by the Association and argued that there was no coercion or interference with the employees but rather offering them a choice and has never refused to negotiate and would continue to do so.

Jan Lotto in closing for the Association said that the actions of the administration did not promote harmony in the workplace and further when the administration announced there would be no flex days in the coming year, constituted a change in conditions and the individuals ability to determine the use of flex days.

FINDINGS OF FACT

After considering the exhibits and oral testimony the Board makes the following findings and substitutes them for the parties requests:

1. The Newfound Teachers Association/NEA-NH is the exclusive representative of the bargaining unit and as such negotiated the presently expired but continuing contract.
2. It is undisputed that the provisions of the expired contract are to remain in effect pending the negotiations of a new contract.
3. The Administration did sponsor and support a ballot survey of the teachers to determine their desires regarding the utilization of flex time without any prior discussions with the exclusive representative. (See Exhibit Association 3-3A)
4. Had the results of the (ballot) survey been implemented in any way it would have been a change in conditions.

5. The District did bypass the exclusive representative and wanted to discuss terms and conditions directly with the teachers bypassing the exclusive representative in violation of RSA 273-A:5 (i) and (d).
6. 273-A conveys upon the certified bargaining unit the right to exclusively represent its members and such exclusivity imposes a duty on the employer to restrict its activity concerning changes in the terms and conditions of employment to communication with the representative.
(See PELRB Decision 82-35)

ORDER

The Board finds the Newfound School District guilty of unfair labor practice in violation of RSA 273-A:5 (i) failing to discuss with the certified bargaining unit matters affecting terms and conditions of employment. The Association is the exclusive representative of bargaining unit and it is the exclusive channel for all proposals concerning the terms and conditions of employment.

The District is ordered to CEASE and DESIST such activities (survey) (ballot) and to post this notice in conspicuous places in the work place.

Signed this 6th day of June, 1990.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and Daniel Toomey present and voting. Also present, Executive Director, Evelyn C. LeBrun.